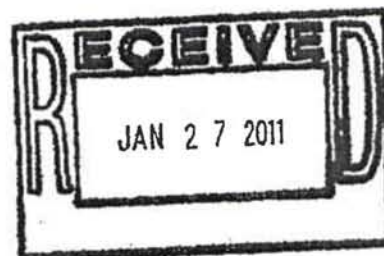


FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

January 26, 2011



Cherie R. Kiser
Cahill Gordon & Reindel, LLP
1990 K Street, N.W., Suite 950
Washington, D.C. 20006-1181

Re: STi Prepaid, LLC
FY 2010 Regulatory Fee
Fee Control No. RROG-10-00013068

Dear Ms. Kiser:

This letter responds to your request dated August 31, 2010 (*Request*), on behalf of STi Prepaid, LLC (STi Prepaid) for waiver or reduction of the fiscal year (FY) 2010 regulatory fee. Our records reflect that STi Prepaid has not paid the [REDACTED] FY 2010 regulatory fee. For the reasons stated herein, we deny your request.

You assert that STi Prepaid is required to pay regulatory fees that are "grossly excessive" and out of proportion to that required of other carriers and to its stature as a very small carrier in the United States market.¹ You maintain that the other carriers should be equitably sharing the burden of the regulatory fees.² You state that as an interstate telecommunications service provider, STi Prepaid calculates its regulatory fees based on its interstate and international revenues.³ You claim that as a result of this calculation and because STi Prepaid earns substantial revenues internationally, the company's FY 2010 regulatory fee is more than 15 percent of its 2009 interstate service revenues.⁴ You aver that STi Prepaid's regulatory fee represents a significant percentage of the total regulatory fee fund and that the company's activities impose "little, if any," demands on the Commission's resources.⁵

¹ See *Request* at 2-3.

² *Id.* at 2.

³ *Id.* STi Prepaid provides long distance services primarily using dial-around calling and prepaid calling cards. *Id.* at 3 n.13

⁴ *Id.* at 3.

⁵ *Id.*

You contend that payment of the regulatory fee would cause STi Prepaid significant financial hardship and hinder its ability to remain competitive.⁶ You assert that STi Prepaid experienced significant losses in 2009 and through the first seven months of 2010 due to international competition and new calling technologies and services.⁷ You state that STi Prepaid's federal fee obligations total nearly one half of its earnings in 2009 in interstate service revenues.⁸

You claim that the amount that STi Prepaid allocated to depreciation and amortization through July 2010 "has no bearing on STi Prepaid's ability to pay the FY 2010 regulatory fees at present."⁹ You maintain that STi Prepaid "has expended significant sums in recent years and through July 2010 in capital expenditures, network upgrades, and acquisitions in order to remain technologically current and value-competitive . . . [and] reflect an attempt by STi Prepaid to maintain current revenue levels."¹⁰ You aver that because these expenditures are significantly more than the depreciation deductions taken in the same time period, "[l]ooking at the . . . depreciation deduction . . . in isolation . . . wrongly ignores the additional monies STi Prepaid consistently expends to invest in its network and improve its services."¹¹ You claim that small businesses like STi Prepaid are vital to the nation's economic health and its workers' welfare and "warrant special consideration by the Commission because of their centrality to the competitive nationwide telecommunications marketplace."¹² You submit, among other documents, STi Prepaid's "Statement of Operations" for the calendar year ending July 31, 2010 (*Financial Statement*) and the salaries of STi Prepaid's officers.¹³

⁶ *Id.* at 3-4.

⁷ *Id.* at 4.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 6.

¹³ *Id.*, Attachments.

The Commission may waive, reduce, or defer regulatory fees only upon a showing of good cause and a finding that the public interest will be served thereby.¹⁴ The Commission recognized that in certain instances payment of a regulatory fee may impose an undue financial hardship upon a licensee and therefore decided to waive, reduce or defer its regulatory fees in those instances where a petitioner presents a compelling case of financial hardship.¹⁵ In reviewing a showing of financial hardship, the Commission relies upon a licensee's cash flow, as opposed to the entity's profits, and considers whether the licensee lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁶ Thus, even if a licensee loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Our review of the record, including STi Prepaid's *2010 Financial Statement*, indicates that STi Prepaid suffered a financial loss in the first seven months of the 2010 calendar year which was fully offset by a depreciation deduction. The Commission considers depreciation deductions to be funds available to pay the regulatory fee, because the loss resulted from the depreciation deduction. Although STi Prepaid may have made certain expenditures over the years in excess of depreciation deductions during the same time periods, that does not alter the fact that the depreciation deduction on the *2010 Financial Statement* represents a non-cash expenditure. Under generally accepted accounting principles, depreciation is not taken into account when counting a company's cash flow from operations because it is considered a non-cash expenditure. Moreover, STi Prepaid's various expenditures, which you state were taken to remain "technologically current and value-competitive" and to maintain "current revenue levels[,] were strategic business decisions and, as such, were voluntary acts entirely within STi Prepaid's discretion and under its control. We therefore deny your waiver request on the grounds of financial hardship.

With respect to your argument that the Commission's methodology for calculating regulatory fees imposes a disparate burden on STi Prepaid as a provider of interstate and international telecommunications services, we note that STi Prepaid raised substantially similar arguments in response to the Commission's request for comment on the subject of regulatory fees applicable to Interstate Telecommunications Service Providers (ITSPs), including the methodology for assessing regulatory fees for ITSPs, in *Assessment and*

¹⁴ See 47 U.S.C. §159(d); 47 C.F.R. §1.1166; see also *Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5344 (1994) (*Report and Order*), on recon., *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761 (1995) (*Memorandum Opinion and Order*), (regulatory fees may be waived, deferred, or reduced on a case-by-case basis in extraordinary and compelling circumstances upon a clear showing that a waiver would override the public interest in reimbursing the Commission for its regulatory costs).

¹⁵ See *Report and Order*, 9 FCC Rcd 5344 at 5346, on recon., 10 FCC Rcd at 12761-62.

¹⁶ See *Memorandum Opinion and Order* at 12761-62.

Collection of Regulatory Fees for Fiscal Year 2008, Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6389, 6405 (2008) (*FY 2008 Further Notice of Proposed Rulemaking*, which the Commission addressed in the *2010 Report and Order*).¹⁷

In the *2010 Report and Order*, the Commission decided not to change the current methodology for assessing regulatory fees for ITSPs but, instead, determined to review the issue in future years “in the context of fundamental reform.”¹⁸ Given the Commission’s decision in the *2010 Report and Order* not to change the current methodology for calculating ITSP regulatory fees for FY 2010 and its intention to address any such changes as part of a more comprehensive rulemaking proceeding in the future, we find that your assertion that the Commission’s current rules require STi Prepaid as an ITSP to bear a disproportionate share of the regulatory fee does not support a waiver of the FY 2010 regulatory fees.

Regarding your contention that STi Prepaid’s activities impose few demands on the Commission’s resources, the Commission has consistently “reject[ed] arguments that regulatory fees must be precisely calibrated, on a service-by-service basis, to the actual costs of the Commission’s regulatory activities for that service.”¹⁹ With respect to your contention that small businesses like STi Prepaid warrant “special consideration” because they are vital to the nation’s economic health and its workers’ welfare, we find that you have not articulated a rationale as to why STi Prepaid in particular warrants special treatment. Your request applies broadly to all small businesses and, in effect, requests modification of the rule for an entire class of companies. Such changes may only be instituted through a rulemaking proceeding.²⁰ We therefore find that you have not

¹⁷ See *Assessment and Collection of Regulatory Fees for Fiscal Year 2010, Report and Order*, 25 FCC Rcd 9278, 9288 (2010) (*2010 Report and Order*) (summarizing STi Prepaid’s arguments in response to the issues raised in the *FY 2008 Further Notice of Proposed Rulemaking* relative to ITSPs).

¹⁸ *Id.* at 9288-90. The Commission stated that “[i]n a separate and forthcoming action,” it would “further examine the nature and extent of all changes that need to be made to our regulatory fee schedule and calculations.” *Id.* at 9290.

¹⁹ *Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, 19 FCC Rcd 11662, 11665 (2004); see also *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, 12 FCC Rcd 17161, 17171-2 (1997); *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd. 13512, 13524 (1995); *Assessment and Collection of Regulatory Fees for Fiscal Year 1998, Report and Order*, MD Docket No. 98-36, FCC 98-115, 1998 WL 320272, para. 15 (1998).

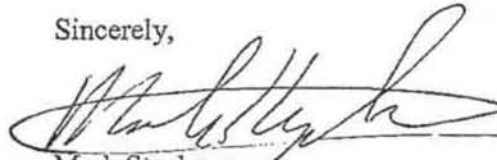
²⁰ Section 1.1166 of the rules specifically states that “[r]equests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.” 47 C.F.R. §1.1166.

demonstrated extraordinary and compelling circumstances warranting a waiver on this basis. Accordingly, your request for waiver of the FY 2010 regulatory fees is denied.

You have also requested confidential treatment of the financial data that you submitted with your request for fee relief. Pursuant to section 0.459(d)(1) of the Commission's rules, 47 C.F.R. §0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your regulatory fees is received, you will be notified and afforded the opportunity to respond at that time.²¹

Payment of the ~~§ 1.227-163~~ regulatory fee is now due. The regulatory fee should be filed together with a Form FCC 159 (copy enclosed) within 30 days from the date of this letter. If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



Mark Stephens
Chief Financial Officer

Enclosure

²¹ By this letter, we also grant your request for a deferral of payment while the waiver request is pending.